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21

22 UNITED STATES DISTRICT COURT  
23 DISTRICT OF ARIZONA  
24

25 IN RE: Bard IVC Filters Products Liability  
Litigation,

No. 2:15-MD-02641-DGC

**THE PARTIES' JOINT STATUS  
REPORT FOR THE DECEMBER 15,  
2017 CASE MANAGEMENT  
CONFERENCE**

1 In accordance with Paragraph G of Case Management Order No. 27 [Doc. 8133],  
 2 the Parties hereby submit their Joint Status Report for the December 15, 2017 Case  
 3 Management Conference.

4 **I. Discovery**

5 A. MDL Common Discovery

6 The Parties completed MDL common discovery on February 3, 2017. The  
 7 following depositions have been completed:

|    |                   |  |
|----|-------------------|--|
| 8  | December 15, 2015 | 30(b)(6) re FDA Warning Letter           |
| 9  | January 11, 2016  | Kay Fuller                               |
| 10 | January 20, 2016  | Continued 30(b)(6) re FDA Warning Letter |
| 11 | March 18, 2016    | 30(b)(6) re corporate structure          |
| 12 | April 27, 2016    | 30(b)(6) re ESI systems structure        |
| 13 | May 3, 2016       | Murray Asch, M.D.                        |
| 14 | May 11, 2016      | Carol Vierling                           |
| 15 | May 17, 2016      | Anne Bynon                               |
| 16 | May 24, 2016      | Len DeCant                               |
| 17 | June 2, 2016      | John DeFord                              |
| 18 | June 9, 2016      | Bret Baird                               |
| 19 | June 16, 2016     | Robert DeLeon                            |
| 20 | June 17, 2016     | Joe DeJohn                               |
| 21 | July 18, 2016     | Abithal Raji-Kubba                       |
| 22 | July 27, 2016     | Bill Little                              |
| 23 | July 27, 2016     | Judy Ludwig                              |
| 24 | July 29, 2016     | John Wheeler                             |
| 25 | August 9, 2016    | Maureen Uebelacker                       |
| 26 | August 16, 2016   | Daniel Orms                              |
| 27 | August 19, 2016   | Mary Edwards                             |
| 28 | August 24, 2016   | Cindi Walcott                            |

|    |                    |   |
|----|--------------------|---|
| 1  | August 30, 2016    | 30(b)(6) re REACH program                     |
| 2  | September 7, 2016  | Steve Williamson                              |
| 3  | September 7, 2016  | 30(b)(6) re Sales/Marketing                   |
| 4  | September 7, 2016  | Kevin Shifrin                                 |
| 5  | September 16, 2016 | Jack Sullivan                                 |
| 6  | September 19, 2016 | Brian Doherty                                 |
| 7  | September 23, 2016 | Holly Glass                                   |
| 8  | September 29, 2016 | John Van Vleet                                |
| 9  | October 11, 2016   | Chris Ganser                                  |
| 10 | October 18, 2016   | Natalie Wong                                  |
| 11 | November 3, 2016   | Jack Sullivan (continued)                     |
| 12 | November 11, 2016  | Robert Cortelezzi                             |
| 13 | December 6, 2016   | David Peeler, M.D.                            |
| 14 | January 4, 2017    | John Kaufman, M.D.                            |
| 15 | January 18, 2017   | Michael Randall - 30(b)(6) Meridian/Denali    |
| 16 | January 18, 2017   | Kim Romney                                    |
| 17 | January 19, 2017   | Robert Carr - 30(b)(6) Key Opinion Leaders    |
| 18 | January 20, 2017   | Scott Trerotola, M.D.                         |
| 19 | January 24, 2017   | Scott Randall                                 |
| 20 | January 25, 2017   | Gary Cohen, M.D.                              |
| 21 | January 26, 2017   | Chad Modra - 30(b)(6) Failure Rate Thresholds |
| 22 | January 26, 2017   | Anthony Venbrux, M.D.                         |
| 23 | January 30, 2017   | Frank Lynch, M.D.                             |
| 24 | January 31, 2017   | Mark Wilson                                   |
| 25 | February 1, 2017   | William Stavropoulos, M.D.                    |
| 26 | February 2, 2017   | Mike Randall                                  |
| 27 | February 2, 2017   | Kevin Boyle                                   |
| 28 | June 6, 2017       | Rob Carr (Preemption Declaration)             |

1 B. MDL Expert Disclosure and Discovery

2 Plaintiffs made their initial disclosures of expert witnesses on March 3, 2017, and  
3 their initial disclosures relating to the Meridian and Denali devices on April 7, 2017.

4 Those disclosures included the following witnesses:

5 David W. Bates, M.D., MSc

6 Rebecca Betensky, Ph.D.

7 Mark J. Eisenberg, M.D.

8 David Garcia, M.D.

9 Steven M. Hertz, M.D.

10 Sanjeeva Kalva M.D.

11 David A. Kessler, M.D.

12 Thomas Kinney, M.D., M.S.M.E.

13 Robert M. McMeeking, Ph.D., NAE, FREng, FRSE, LFASME

14 Robert O. Ritchie, Ph.D.

15 Suzanne Parisian, M.D.

16 Anne Christine Roberts, M.D.

17 Michael B. Streiff, M.D.

18 Robert L. Vogelzang, M.D.

19 Defendants made their initial disclosures of expert witnesses on April 14, 2017,  
20 and their initial disclosures relating to the Meridian and Denali devices on May 12, 2017.

21 Those disclosures included the following witnesses:

22 Christine L. Brauer, Ph.D.

23 Paul Briant, Ph.D., P.E.

24 Audrey A. Fasching, Ph.D., P.E.

25 David W. Feigal, Jr., M.D., M.P.H.

26 Clement J. Grassi, M.D.

27 Mark W. Moritz, M.D.

28 Christopher S. Morris, M.D.

1 Frederick B. Rogers, M.D., FACS

2 Moni Stein, M.D., FSIR

3 Ronald A. Thisted, Ph.D.

4 Donna Bea Tillman, Ph.D., M.P.A.

5 Plaintiffs made their rebuttal disclosures of expert witnesses on May 12, 2017.

6 Those disclosures included the following witnesses:

7 Rebecca Betensky, Ph.D.

8 Kush Desai, M.D.

9 Mark J. Eisenberg, M.D.

10 Steven M. Hertz, M.D.

11 Robert M. McMeeking, Ph.D.

12 Robert O. Ritchie, Ph.D.

13 Robert L. Vogelzang, M.D.

14 The following expert depositions have been taken:

15 May 9, 2017 David W. Bates, M.D., MSc (class-action)

16 May 16, 2017 Steven M. Hertz, M.D. (class-action)

17 May 17, 2017 Christopher S. Morris, M.D.

18 June 5, 2017 Robert L. Vogelzang, M.D.

19 June 6, 2017 Kush Desai, M.D.

20 June 9, 2017 Robert O. Ritchie, Ph.D.

21 June 15, 2017 Clement J. Grassi, M.D.

22 June 17, 2017 Thomas Kinney, M.D., M.S., M.E.

23 June 21, 2017 David L. Garcia, M.D.

24 June 21, 2017 Suzanne Parisian, M.D.

25 June 21, 2017 Anne Christine Roberts, M.D.

26 June 23, 2017 Rebecca Betensky, Ph.D.

27 June 26, 2017 Audrey Fasching, Ph.D., PE

28 July 6, 2017 Mark J. Eisenberg, M.D., MPH, FACC, FAHA

|    |                    |   |
|----|--------------------|---|
| 1  | July 6, 2017       | Robert M. McMeeking, Ph.D., NAE, FEng, FRSE, LFASME |
| 2  |                    |   |
| 3  | July 7, 2017       | Anne Christine Roberts, M.D.                        |
| 4  | July 11, 2017      | Sanjeeva Kalva, M.D.                                |
| 5  | July 12, 2017      | Michael B. Streiff, M.D.                            |
| 6  | July 13, 2017      | Paul Briant, Ph.D, PE                               |
| 7  | July 18, 2017      | Mark W. Moritz, M.D.                                |
| 8  | July 18, 2017      | Frederick B. Rogers, M.D., MS, FACS                 |
| 9  | July 20, 2017      | David W. Feigal, Jr., M.D., MPH                     |
| 10 | July 21, 2017      | Darren R. Hurst, M.D.                               |
| 11 | July 24, 2017      | Derek D. Muehrcke, M.D.                             |
| 12 | July 25, 2017      | Christopher S. Morris, M.D.                         |
| 13 | July 26, 2017      | J. Matthew Sims, MC, MS                             |
| 14 | July 26, 2017      | Kenneth Herbst, M.D.                                |
| 15 | July 28, 2017      | Ronald A. Thisted, Ph.D.                            |
| 16 | July 31, 2017      | David A. Kessler, M.D.                              |
| 17 | July 31, 2017      | Moni Stein, M.D.                                    |
| 18 | August 2, 2017     | Christine L. Brauer, M.D., Ph.D.                    |
| 19 | August 3, 2017     | Paul Briant, Ph.D., PE                              |
| 20 | August 3, 2017     | Audrey Fasching, Ph.D.                              |
| 21 | August 3, 2017     | David S. Poll, M.D.                                 |
| 22 | August 4, 2017     | Robert O. Ritchie, Ph.D.                            |
| 23 | August 4, 2017     | Donna Bea Tillman, Ph.D.MPA, FRAPS                  |
| 24 | August 16, 2017    | Lora K. White, RN, BSN, CCM, CNLCP                  |
| 25 | August 25, 2017    | Daniel Cousin, M.D.                                 |
| 26 | September 29, 2017 | Piotr Sobieszczyk, M.D.                             |
| 27 |                    |   |
| 28 |                    |   |

1 C. Barazza Class Action Discovery

2 The Parties completed the depositions of the named plaintiffs. The following  
3 depositions were taken:

|    |                   |                  |
|----|-------------------|------------------|
| 4  | October 19, 2016  | Diane Washington |
| 5  | October 28, 2016  | James Holt       |
| 6  | November 10, 2016 | Gregory Lester   |
| 7  | November 16, 2016 | Maria Barazza    |
| 8  | November 30, 2016 | Edward Mims      |
| 9  | December 1, 2016  | Nancy Mosher     |
| 10 | December 6, 2016  | Thomas Flournay  |
| 11 | December 6, 2016  | Delmar Lee Peck  |
| 12 | December 15, 2016 | Denise Tomlin    |
| 13 | January 24, 2017  | John Van Vleet   |
| 14 | February 27, 2017 | Linda Walker     |
| 15 | May 11, 2017      | Ana Hernandez    |

16 The Parties designated and disclosed experts on class certification issues, including  
17 Plaintiffs' rebuttal expert reports. Many of those class certification experts were also the  
18 same experts in the general MDL and were deposed at the same time for both the MDL  
19 and the class action.

20 D. Bellwether Group 1 Depositions

21 1. Fact Discovery

22 The Parties took the following fact witness depositions in the five bellwether cases:

|    |                  |                                      |
|----|------------------|--------------------------------------|
| 23 | January 25, 2017 | Lisa Ann Hyde (Hyde)                 |
| 24 | January 25, 2017 | Mark E. Hyde (Hyde)                  |
| 25 | February 3, 2017 | Doris Yvette Singleton-Jones (Jones) |
| 26 | February 3, 2017 | Alfred L. Jones, Sr. (Jones)         |
| 27 | February 8, 2017 | Debra Mulkey (Mulkey)                |
| 28 | February 8, 2017 | Joshua Thompson (Mulkey)             |

|    |                   |                                   |
|----|-------------------|-----------------------------------|
| 1  | February 8, 2017  | Carol Diane Kruse (Kruse)         |
| 2  | February 20, 2017 | Sherr-Una Booker (Booker)         |
| 3  | February 20, 2017 | Diane Michelle Biere (Kruse)      |
| 4  | March 20, 2017    | Scott Karch (Mulkey)              |
| 5  | March 21, 2017    | Marcus D'Ayala, M.D. (Booker)     |
| 6  | March 22, 2017    | Salil Patel, M.D. (Booker)        |
| 7  | March 23, 2017    | Kirsten J. Nelson, M.D. (Jones)   |
| 8  | March 23, 2017    | Anthony James Avino, M.D. (Jones) |
| 9  | March 28, 2017    | Marc A. Workman, M.D. (Mulkey)    |
| 10 | April 3, 2017     | Mark R. Hutchins, M.D. (Kruse)    |
| 11 | April 4, 2017     | Shanon D. Smith, M.D. (Kruse)     |
| 12 | April 6, 2017     | David A. Henry, M.D. (Hyde)       |
| 13 | April 7, 2017     | James Burks, M.D. (Jones)         |
| 14 | May 31, 2017      | Angelic Thompson (Mulkey)         |
| 15 | May 31, 2017      | Lorelie Thompson (Mulkey)         |
| 16 | May 31, 2017      | Torin Walters, M.D. (Mulkey)      |
| 17 | June 1, 2017      | Pho Nguyen, M.D. (Mulkey)         |
| 18 | June 15, 2017     | Brandon Kang, M.D. (Booker)       |
| 19 | June 20, 2017     | Richard Harvey, M.D. (Booker)     |
| 20 | June 26, 2017     | Eric Hairston (Booker)            |
| 21 | July 7, 2017      | Amy Sparks, M.D. (Hyde)           |
| 22 | July 11, 2017     | Colleen Taylor, M.D. (Jones)      |
| 23 | July 12, 2017     | Aaron Donner (Mulkey)             |
| 24 | July 19, 2017     | Michael Jennings (Kruse)          |
| 25 | July 20, 2017     | Joyce Bieck, AART (Kruse)         |
| 26 | August 3, 2017    | Brody Puckett (Kruse)             |
| 27 | August 3, 2017    | Chris Smith (Jones)               |
| 28 | August 5, 2017    | David Chodos (Jones)              |

August 7, 2017 Shanice Matthews (Jones)

August 7, 2017 Sharese May (Jones)

August 15, 2017 Bryan Vogel (Booker and Kruse)

August 23, 2017 Tim Hug (Hyde)

2. Case-Specific Expert Disclosures and Discovery

On June 5, 2017, Plaintiffs disclosed case-specific expert reports by the following expert witnesses in all five bellwether cases:

Darren Hurst, M.D.

Derek D. Muehrcke, M.D.

On June 5, 2107, Plaintiffs disclosed the case-specific expert report of David Garcia, M.D. in the Jones bellwether case.

On June 9, 2017, in accordance with the agreement of the Parties, Plaintiffs disclosed case-specific expert reports by Robert M. McMeeking, Ph.D., NAE, FREng, FRSE, LFASME in all five bellwether cases.

On June 12, 2017, in accordance with the agreement of the Parties, Plaintiffs disclosed case-specific expert reports by the following expert witnesses in all five bellwether cases:

Robert O. Ritchie, Ph.D.

J. Matthew Sims, MC, MS & Lora K. White, RN, BSN, CNLCP, CCM, MSCC

On July 3, 2017, Defendants disclosed case-specific expert reports for the following expert witnesses:

Kenneth D. Herbst, M.D.

Mark W. Moritz, M.D.

Christopher S. Morris, M.D.

Moni Stein, M.D., FSIR

On July 13, 2017, in accordance with agreement of the parties, Defendants disclosed case-specific expert reports for the following expert witnesses:

Audrey A. Fasching, Ph.D.

Paul Briant, Ph.D

Daniel Cousin, M.D.

David Poll, M.D.

Piotr Sobieszczyk, M.D.

All general MDL deposition discovery and all depositions related to the initial five bellwether cases have been completed.

## **II. Science Day Procedure**

The Parties made their Science Day presentations on October 5, 2017 as described in CMO 27.

## **III. Summary Judgment and Daubert Motions**

A. The Parties filed their *Daubert* and summary judgment motions in accordance with CMO 23 and this Court's August 31, 2017, Order [Doc. 7368]. The Court has heard and submitted its rulings on the following motions argued on November 17, 2017.

- Defendants' Motion and Memorandum in Support of Motion for Summary Regarding Preemption (Docs. 5396 and 7828) (denied).
- Defendants' Motion and Memorandum in Support of Motion for Partial Summary Judgment of Plaintiff SherrUna Booker's Claims (Docs. 7456 and 8163) (granted in part, denied in part).

B. In accordance with the Court's CMO No. 28, the parties are ready to argue the following motions on December 15, 2017:

1. Defendants' Motion and Memorandum in Support of Motion to Disqualify Robert Vogelzang, M.D. and Kush Desai, M.D. as Testifying Experts; and Scott Resnick, M.D. and Robert Lewandowski, M.D. as Consulting Experts for Plaintiffs (Docs. 6678, 7029, and 7058);
2. Defendants' Motion and Memorandum in Support of Motion to Disqualify Thomas Kinney, M.D. as an Expert for Plaintiffs (Docs. 5677, 5803, and 5879);
3. Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc.'s Motion and Incorporated Memorandum to Exclude (*Daubert*) the Opinions of David Kessler, M.D. and Memorandum of Law in Support (Docs. 7309 and 7805);

4. Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc.'s Motion and Incorporated Memorandum to Exclude (*Daubert*) the Opinions of Suzanne Parisian, M.D. and Memorandum of Law in Support (Docs. 7308 and 7814).
5. Defendants C. R. Bard, Inc.'s and Bard Peripheral Vascular, Inc.'s Motion to Exclude (*Daubert*) the Opinions of Thomas Kinney, M.D., Anne Christine Roberts, M.D., and Sanjeeva Kalva, M.D. and Memorandum of Law in Support (Docs. 7296, and 7812)
6. Defendants C. R. Bard Inc.'s and Bard Peripheral Vascular, Inc.'s Motion to Exclude (*Daubert*) the Opinions of Derek R. Muehrcke, M.D. and Memorandum of Law in Support (Docs. 7304 and 7813)

C. The parties have agreed that some motions scheduled to be heard at the January 19, 2018 hearing may be ruled upon without the need for oral argument:

1. Plaintiffs' Motion to Exclude Opinions and Testimony of Christopher S. Morris, M.D. (Docs. 7320 and 7800);
2. Plaintiffs' Motion to Exclude Opinions and Testimony of Clement J. Grassi, M.D. (Docs. 7326 and 7798);
3. Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc.'s Motion and Incorporated Memorandum to Exclude (*Daubert*) the Opinions of David Garcia, M.D. and Michael Streiff, M.D. and Memorandum of Law in Support (Docs. 7294 and 7808);
4. Plaintiffs' Motion to Exclude Defense Expert Opinions Under Fed. R. Evid. 702 Based on Their Use of the Criminal Law Standard of Certainty (Docs. 7324 and 77973).

D. The parties anticipate the following motions will be heard on January 15, 2018:

1. Defendants C. R. Bard Inc.'s and Bard Peripheral Vascular, Inc.'s Motion to Exclude (*Daubert*) the Opinions of Darren R. Hurst, M.D., and Supporting Memorandum of Law (Docs. 7302 and 7811);
2. Defendants C. R. Bard Inc.'s and Bard Peripheral Vascular, Inc.'s Motion to Exclude (*Daubert*) the Opinions of Mark J. Eisenberg, M.D. and Memorandum of Law in Support (Docs. 7291 and 7810);
3. Defendants C. R. Bard Inc.'s and Bard Peripheral Vascular, Inc.'s Motion to Exclude the Opinions of Rebecca Betensky, Ph.D. and Memorandum of Law in Support (Docs. 7288 and 7809);
4. Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc.'s Motion to Exclude (*Daubert*) the Opinions of Robert M. McMeeking, Ph.D., and Supporting Memorandum of Law (Docs. 7314 and 7806);
5. Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc.'s Motion to Exclude (*Daubert*) the Opinions of Robert O. Ritchie, Ph.D., and Supporting Memorandum of Law (Docs. 7316 and 7807);

6. Defendants' Motion and Memorandum in Support of Motion for Partial Summary Judgment of Plaintiffs Doris and Alfred Jones's Claims (Docs. 7351 and 7943).

#### IV. Leave to File Early Motion in Limine

##### A. Plaintiffs' Position

One of the generic motions *in limine* that Plaintiffs intend to file will be their "Cisson FDA" motion seeking exclusion of certain FDA-related evidence.<sup>1</sup> Plaintiffs request an early ruling on their "Cisson FDA" motion *in limine* as this ruling will affect both parties' trial preparation with regard to which witnesses will be called and for how long, as well as which portions of video-taped depositions will be/can be played at trial. Plaintiffs are prepared to file this motion within five (5) days of this Court's ruling on the matter.

##### B. Defendants' Position

The Plaintiffs raised this same issue prior to the last status conference. At that time, the Defendants expressed concern about attempting to add expedited motions *in limine* to a schedule already filled with multiple *Daubert* and summary judgment motions to be considered. The Defendants also noted that they would like the opportunity to file one motion *in limine* on a parallel track with the Plaintiffs' *Cisson* motion, and in excess of the Court's normal page limitations for such motions. The Court addressed these issues in Case Management Order No. 28 and set a briefing schedule for all motions *in limine*. See Doc. No. 8851. The Defendants stand ready to follow that schedule or any modified schedule established by the Court.

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<sup>1</sup> This issue was recently addressed by the Eleventh Circuit in *Eghnayem v. Boston Scientific, Inc.*, 2017 WL 4681345, at \*6 (11<sup>th</sup> Cir. Oct. 19, 2017), and previously by the Fourth Circuit in *In re C.R. Bard, Inc., MDL No. 2187, Pelvic Repair Sys. Prods. Liab. Litig.*, 810 F.3d 913 (4th Cir. Jan. 14, 2016). This issue was also recently addressed in the Cook IVC Filter MDL. (See, Doc. 8032).

**V. Jury Questionnaire**

The parties are working on a proposed Jury Questionnaire and will submit their proposed Jury Questionnaire to the Court before the December 15, 2017 case management conference.

Respectfully submitted this 8th day of December 2017.

GALLAGHER & KENNEDY, P.A.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 8th, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/ Amanda C. Sheridan

4814-2565-1032

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